REMARKS

Claims 1-51 and 61-89 are pending in the Application. Claims 1, 8, 19, 25, 35, 37, 40, 42, 45, 47, 49 and 73 are being amended. Support for the amendments can be found at least on page 10, line 26-page 11, line 5 of the Specification as originally filed. Applicant believes no new matter is being introduced by way of the amendments.

Regarding claim rejections under 35 U.S.C. § 103(a).

Claims 1-7, 11-16, 18-24, 28-30, 32, 33, 35, 36, 38, 39-41, 43-48, 50, 51, 62, 64, 66, 68, 70, 72, 74-79, and 84-89 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Primak *et al*. (Pub. No. 2001/0039585), hereinafter "Primak" in view of Aman *et al*. (USPN 5,603,029), hereinafter "Aman." Applicant respectfully disagrees.

Applicant amends claim 19 with elements from claim 25. Applicant cancels claim 25 in favor of now amended claim 19. Applicant's now amended claim 19 recites in pertinent part:

> adding to the candidate server list extra
> that are selected from among the servers represented by the
> weights, beyond the number of servers selected based on the
> weights.

Applicant agrees that Primak does not specifically return a candidate server list of at least two candidate servers. *See* Office Action, item 3, last paragraph. Applicant further agrees that the combination of Primak and Aman does not disclose the candidate server list includes extra, randomly selected, candidate servers beyond the candidate servers selected based on the weights. *See* Office Action, item 20. Applicant disagrees, however, that the combination of Primak, Aman, and Guenthner discloses all of the elements of now amended claim 19, in particular, "adding to the candidate server list extra servers…beyond the number of servers selected based on the weights." Because Primak does not disclose a candidate server list, as noted above, only the Aman and Guenthner references are relevant to the following analysis.

Aman merely describes returning a list of <u>fixed size</u>. *See* Aman, column 21, lines 14-59 referring to FIG. 7A (blocked 705 setting the size of a list of output servers to be provided to a client application). Aman then assigns servers to the list until it reaches the fixed size. *See* Aman, column 24, line 60-column 25, line 3 referring to FIGS. 9A-C. In other words, there is a

maximum number of servers that Aman can include in the list. *See* Aman, column 21, lines 14-59. As such, Aman fails to disclose adding additional or extra servers beyond the maximum number of servers.

Now turning to the Guenthner reference that merely describes maintaining in a list a same number of IP addresses returned from a nameserver. *See* Guenthner, column 4, line 51-column 5, line 4 referring to FIG. 4; and column 7, lines 19-53 referring to FIG. 6 (Steps 100 and 106 re-fetching IP addresses from a nameserver). Guenthner fails to disclose adding extra IP addresses to the list of IP addresses returned from the nameserver.

Combining Aman and Guenthner as the Office proposes, merely results in maintaining in a list, a fixed number of entries. The proposed combination still falls short of Applicant's now amended claim 19, "adding to the candidate server list extra servers that are selected from among the servers represented by the weights, beyond the number of servers selected based on the weights." Emphasis added.

Furthermore, hypothetically modifying the Aman reference to operate as Applicant's now amended claim 19 (*viz*, "adding extra servers that are selected from among the servers represented by the weights, beyond the number server selected based on the weights") in a manner that would render Applicant's claim obvious, would in fact render Aman inoperable for its intended purpose. *See* MPEP § 2143.02 (V) (proposed modification cannot render prior art unsatisfactory for its intended purpose). In Aman, to ensure work requests are balanced among a plurality of servers in view of accompanying user-defined business importance, Aman determines whether a server is an eligible or candidate server based on whether the server is running a policy and whether capacity information is known. *See* Aman, column 17, lines 45-67. Aman then weights the servers and includes them in an output list based on the weights, preferring eligible servers over candidate servers. If Aman "add[s] extra servers…beyond the number of server selected based on the weight," (as recited in Applicant's now amended claim 19) then, for example, a server with unknown capacity ("extra server") may be added to a list of servers for which capacity information is known. The hypothetical Aman system would thus appropriate some portion of the work from these servers with unknown capacity, in direct contradiction with the teachings of Aman. Therefore, Aman could not balance work requests while remaining consistent with business importance.

As such, the Primak, Aman, and Guenthner reference, either separately or in combination, neither teach nor provide motivation for Applicant's now amended claim 19. Accordingly, Applicant respectfully submits that now amended claim 19 overcomes the rejection under 35 U.S.C. § 103(a) and respectfully requests that the claim be allowed.

Now amended independent claims 1, 35, 40, 45, and 47 recite similar elements as now amended claim 19, and, as such, should be allowed for similar reasons as presented above.

Claims 2-7, 11-16, 18, 20-24, 28-30, 32, 33, 36, 38, 39, 41, 43-44, 46, 48, 50, 51, 62, 64, 66, 68, 70, 72, 74-79, and 84-89 should be allowed for the same reasons as the independent claims from which they depend.

Claims 17, 34, and 80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Aman in view of Meek *et al.* (USPN 6,539,426), hereinafter "Meek." Applicant respectfully disagrees.

Because claims 17, 34, and 80 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits they should be allowed for at least the same reasons.

Claims 8-10, 25-27, 37, 42, 49, 73, and 81-83 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Primak in view of Aman in view of Guenthner *et al.* (USPN 6,134,588), hereinafter "Guenthner."

Because claims 8-10, 25-27, 37, 42, 49, 73, and 81-83 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits the dependent claims should be allowed for at least the same reasons.

Claims 61, 63, 65, 67, 69, and 71 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Primak in view of Aman in view of Lin (USPN 6,298,451).

Because claims 61, 63, 65, 67, 69, and 71 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully

submits they should be allowed for at least the same reasons as the base claims from which they depend.

CONCLUSION

In view of the above amendments and remarks, it is believed that all pending claims (claims 1-51 and 61-89) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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